

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JOSE LUIS AVITIA,
Petitioner.

No. 2 CA-CR 2015-0317-PR
Filed September 18, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County
No. CR1993005724
The Honorable Dawn M. Bergin, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Tennie B. Martin, Phoenix
Counsel for Petitioner

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MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Petitioner Jose Avitia seeks review of the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Avitia has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Avitia was convicted of first-degree murder, kidnapping, conspiracy to commit first-degree murder and kidnapping, and two counts of aggravated assault. The trial court sentenced him to life on the first-degree murder and conspiracy counts and to consecutive terms totaling fifty-eight years’ imprisonment on the remaining counts. His convictions and sentences were affirmed on appeal. *State v. Avitia*, No. 1 CA-CR 95-0009 (memorandum decision filed Apr. 4, 1996). Avitia thereafter sought and was denied post-conviction relief at least twice.

¶3 In December 2011 Avitia initiated another proceeding for post-conviction relief, asserting a claim of actual innocence under Rule 32.1(h). His claim was based on an affidavit from a witness at trial, Victor Ramirez, averring Avitia had not been present when the victim was murdered. Ramirez, however, had told police Avitia was in the room when the victim was killed, but at trial testified that had been a lie. The trial court summarily denied relief. On review Avitia repeats his arguments made below. Importantly, he does not challenge the trial court’s conclusion he failed to establish that no reasonable fact-finder would have found him guilty if presented with Ramirez’s affidavit. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii), (iv). Nor does he address the court’s conclusion that “substantial evidence

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contradict[ed] Ramirez's testimony" and that even had the jury accepted the account Ramirez now presents, it still could have convicted him based on the other evidence presented.

¶4 We cannot say the trial court abused its discretion in denying Avitia's petition for post-conviction relief, particularly in light of his decision not to address the court's conclusions. The court resolved Avitia's claim correctly in a thorough, well-reasoned minute entry, which we adopt. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court's correct ruling in a written decision").

¶5 Therefore, although we grant the petition for review, we deny relief.